

## **REMARKS**

This is a full and timely response to the final Office Action mailed April 6, 2006. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **Present Status of Patent Application**

Upon entry of the amendments in this response, claims 5 and 22-27 remain pending in the present application. More specifically, claims 5 and 22-25 have been currently amended with no introduction of new matter; and claims 1-4 and 6-21 have been canceled. Applicants have canceled these claims merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these claims in a continuing application, if Applicants so choose, and do not intend to dedicate the canceled subject matter to the public. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

#### **A. Allowable Subject Matter**

##### **Examiner's Statement**

Claims 22 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

##### **Response to Examiner's Statement**

Applicants wish to place on record their gratitude for Examiner's indication that claims 22 and 24 would be allowable if rewritten in independent form. Applicants have currently rewritten claim 22 in independent form including all of the limitations of base claim 21 from which it depended directly. Consequently, Applicants respectfully request allowance of rewritten claim 22.

Claim 24 has been rewritten to depend indirectly on claim 22. Because claim 22 is currently allowable, dependent claim 24 is also allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Consequently, Applicants respectfully request allowance of rewritten claim 24.

**B. Claim Objections**

**Statement of the Objection**

Claim 1 is objected to because of the following informalities: in line 16 of the claim “susbtrate” should be replaced with --substrate--. Appropriate correction is required.

**Response to the Objection**

Claim 1 has been currently canceled. Hence, Applicants respectfully assert that the objection has been rendered moot.

**C. Claim Rejections under 35 U.S.C. §102(b)**

**Statement of the Rejection**

Claims 1, 2 and 4 are rejected under 35 U.S.C. §102(b) as being anticipated by US Patent No. 5,640,048 to Selna.

**Response to the Rejection**

Claims 1, 2 and 4 have been canceled without prejudice, waiver or disclaimer. Consequently, Applicants respectfully assert that the rejection of these claims has been rendered moot.

**D. Claim Rejections under 35 U.S.C. §103(a)**

**Statement of the Rejection**

Claims 5 and 11-21, 23, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selna.

**Response to the Rejection**

**Claim 5**

In rejecting Applicants’ claim 5, the Office Action states: “*Regarding claim 5, Selna does not teach using tungsten for the first conductive interconnecting element. Tungsten is a known material that is well suited for use in interconnecting elements. It would have been obvious to one having ordinary skill in the art to select tungsten, since it is a known metal that is well suited for the intended uses.*”

The third of the three criteria cited in MPEP 706.2(j) “Contents of a 35 U.S.C. 103 Rejection”, for establishing a *prima facie* case of obviousness, states that the prior art reference must teach or suggest all the claim limitations. In light of the above-mentioned

admission on the part of the Office Action, Applicants respectfully assert that the rejection fails to satisfy the requirements for a proper rejection under 35 U.S.C. 103(a).

Furthermore, it may be pertinent to point out that MPEP 2144.08 "Obviousness of Species When Prior Art Teaches Genus – 2100 Patentability" is not applicable in this case, because the "genus-species" relationship does not apply.

Referring back to the Office Action admission that Selna does not teach using tungsten, Applicants respectfully traverse the assertion that "*Tungsten is a known material that is well suited for use in interconnecting elements. It would have been obvious to one having ordinary skill in the art to select tungsten, since it is a known metal that is well suited for the intended uses.*" Because reference documents have not been provided to substantiate the assertion that tungsten is well suited for use in interconnecting elements, Applicants conclude that this statement is based on facts within the personal knowledge of the Examiner.

Consequently, Applicants cite 37 CFR 1.104 Nature of examination, paragraph (d) (2), reproduced below for easy reference:

(2) When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Applicants hereby request an affidavit from Examiner supporting the assertion that tungsten is "well suited for interconnecting elements."

If such an affidavit is not provideable, Applicants respectfully assert that the rejection of claim 5 under 35 U.S.C. 103(a) is improper and request withdrawal of the rejection followed by allowance of claim 5.

#### **Claims 11-21**

Claims 11-21 have been currently canceled with no prejudice, waiver or disclaimer. Consequently, Applicants respectfully assert that the rejection of claims 11-21 has been rendered moot.

#### **Claims 23, 25-27**

Because claim 22 is allowable, claims 23 and 25-27 that depend directly or indirectly on claim 22 are also allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Applicants respectfully request withdrawal of the rejection, followed by allowance of Claim 23 and 25-27.

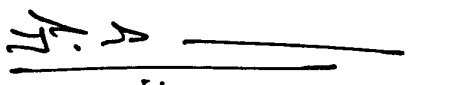
**Prior Art Made of Record**

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

### CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that claims 5 and 22-27 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned representative at (404) 610-5689.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA, 22313-1450, on June 6, 2006



Signature  
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